

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,

Plaintiff,

No. 17-CR-02949-MV-1

v.

DASHAWN ROBERTSON,

Defendant.

**MEMORANDUM OPINION AND ORDER**

**THIS MATTER** is before the Court on Defendant Dashawn Robertson's Motion in Limine for Supplemental Jury Questionnaire. Doc. 234. In it, Mr. Robertson asks the Court to send out a five-page jury questionnaire prior to trial requiring prospective jurors to answer 16 questions about COVID-19. *See id.* The questions cover the prospective jurors' exposure or potential exposure to COVID-19, the risk of complication to themselves or their loved ones if they contract COVID-19, and their personal beliefs about topics such as mask-wearing and stay-at-home orders. *Id.* at Ex. 1. Mr. Robertson argues that the proposed questionnaire will promote safety by limiting the number of prospective jurors reporting to the courthouse and will allow the parties to focus on issues of juror bias during voir dire rather than focusing on COVID-19. *Id.* at 5–6. In response, the government submits that while COVID-19 is undoubtedly serious and the decision to send out the proposed questionnaire is within the Court's discretion, "the best compromise is to alert prospective jurors to call the clerk's office if they have concerns specific to COVID-19, and for the Court to continue to exercise its regular authority either directly or through the clerk's office to excuse panel members, but not to require the creation, distribution, and return of a new questionnaire." Doc. 248 at 1–2.

Given the ongoing severity of the COVID-19 pandemic, the Court understands the requested questionnaire and agrees that screening prospective jurors for concerns related to COVID-19 will promote judicial economy and will help to ensure the safety of all who report to the courthouse for jury selection and trial. The Court believes that the best and most efficient way to do such screening, however, is to send out a letter to all prospective jurors prompting them with COVID-19-related health questions and asking them to contact the Clerk's Office if any of the referenced concerns apply. The Court has drafted such a letter, which is based in large part on the letter from Chief Judge Johnson that the Clerk's Office sent out in advance of other jury trials earlier this year. To address Mr. Robertson's concerns, the Court's version of the letter adds several health questions from the proposed questionnaire. It also instructs prospective jurors to contact the Clerk's Office if their answers to any of the included health questions change prior to reporting for jury duty. The Court will not ask prospective jurors for their personal beliefs about COVID-19 and related regulations, however, because it does not find those questions to be relevant or appropriate.

The Court will accordingly send out a letter prior to the trial date in this case asking prospective jurors to contact the Clerk's Office if they answer "Yes" to any of the following questions, or if their answer to any of the following questions becomes "Yes" at any time before reporting for jury duty:

- Do you have COVID-19 symptoms (fever, cough, shortness of breath, chills, repeated shaking with chills, muscle pain, headache, sore throat and/or loss of taste or smell)?
- Have you tested positive for, or been otherwise diagnosed as having, COVID-19 at any time within the past 30 days? If you answer "No" but then receive a positive COVID-19 test or diagnosis before reporting for jury duty, please advise the Jury Department immediately.


- Are you actively caring for a family member or loved one who has tested positive for COVID-19?
- Are you, or is anyone in your household, at high risk of complications from COVID-19 due to age, medical condition, or another characteristic?
- Are you actively caring for a family member or loved one who is at high risk of complications from COVID-19 due to age, medical condition, or another characteristic?
- Are you now in self-quarantine status and will that status continue into [month of trial]?
- Have you traveled outside of the United States in the last 30 days, or outside of New Mexico in the last 14 days? Please also advise the Jury Department if you are planning to travel between your receipt of this letter and the date on which you are to report for jury duty.
- Are you a healthcare worker caring for COVID-19 patients?

The Court believes that these questions address most of the relevant issues raised by Mr. Robertson's proposed questionnaire and will allow the Clerk's Office to effectively screen prospective jurors for COVID-19-related concerns before they report to the courthouse for jury duty. If Mr. Robertson has additional questions for prospective jurors about COVID-19 that are not addressed by the Court's letter, he will be free to ask them during voir dire.

### CONCLUSION

For the foregoing reasons, Mr. Robertson's Motion in Limine for Supplemental Jury Questionnaire [Doc. 234] is hereby **DENIED**.

Dated this 7th day of December, 2020.

  
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MARTHA VAZQUEZ  
UNITED STATES DISTRICT JUDGE